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May 24, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 01-34 – Special Access Services Investigation

Dear Ms. Cottrell:

In response to the Department's proposal to close this docket, only one carrier – AT&T – filed comments challenging the Department's suggestion. AT&T's arguments provide no cause for the Department to proceed further with this matter.¹

First, the Department has already ruled in this case that it does not have the authority to establish reporting requirements for interstate special access services because "it is preempted from investigating and regulating quality of service for federally tariffed special access services." D.T.E. 01-34, *Order*, at 10-11 (August 9, 2001). There is no dispute that virtually all of the special access services Verizon Massachusetts ("Verizon MA") provides are interstate and beyond the Department's jurisdiction. In fact, since the time the Department opened this investigation until now, the percentage of intrastate special access services as a percentage of Verizon MA's total special access services has decreased from 0.4 per cent to 0.1 percent. The remainder – some 99.9 percent – is interstate. Thus, any Department action here would affect at most only 0.1 percent of special access services provided by Verizon MA. Given the *de minimis* number of intrastate special access services, it is not surprising that most carriers have not objected to the Department's proposal to close the docket. This further highlights why no further resources should be expended to conclude the case.

¹ The Department opened this proceeding as an investigation on its own motion and therefore, there is no procedural or substantive impediment to the Department closing the docket without making findings.

With respect to interstate special access services, the FCC has an open docket concerning service performance. *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, CC Docket Nos. 01-321, 0051, 98-147, 96-98, 98-141, 00-229, RM 10329, Notice of Proposed Rulemaking, FCC 01-339 (rel, November 19, 2001). AT&T complains about the pace of that proceeding and is concerned that the FCC will not adequately develop information. AT&T Comments at 12-13. It, therefore, urges the Department to forge ahead because its findings “could be extremely beneficial to the FCC in its deliberations and decision-making.” *Id.* at 13. AT&T’s dissatisfaction with the FCC hardly provides a reason for the Department to further commit its resources. The FCC has sole authority to regulate interstate special access services and is the appropriate forum for carriers to address any issues regarding the provisioning of those services and/or the establishment of any service measurements. If the FCC believed there was a problem, it could take action. AT&T is clearly disgruntled by what it perceives is FCC inaction, but its complaint is best addressed to the FCC – not by pleas to the Department to take up the slack by addressing services over which it has no authority.

As the Department has acknowledged, the FCC proceeding “would have a substantially greater effect on Verizon’s special access performance, both in-state and interstate, than a Department decision in this docket.” DTE 01-34, *Proposal to Close Docket*, at 2 (April 19, 2005). Given the insignificant number of intrastate special access services in Massachusetts, there is no need for the Department to develop reporting measures that may ultimately conflict with the FCC’s final decision in its investigation. Moreover, the Department should not – and indeed cannot – use this docket to co-opt the regulation of interstate special access services, as AT&T erroneously suggests.

Second, AT&T alleges that Verizon MA’s special access performance levels are deficient and that Verizon MA discriminates in providing such services to carrier versus end-user customers. AT&T Comments at 10-11. Those claims are unfounded. In its comments, AT&T attempts to support these unsubstantiated claims by introducing new data regarding on-time performance for Verizon North. The Department should disregard AT&T’s data because: (1) it is not based on record evidence presented in the case; (2) it does not reflect Massachusetts-specific performance results; (3) it does not identify a single instance in which Verizon MA failed adequately to provision or maintain an intrastate special access service; and (4) it cannot be reconciled with Verizon’s data for special access services for the same time period.

To the extent that raw data can be used to draw any conclusions about special access performance, Verizon MA demonstrated in the case that its on-time provisioning results in Massachusetts were consistently in the 93 to 94 percent range for carrier customers for the first quarter of 2002. Verizon MA Initial Brief, at 9. This exceeds Verizon MA’s on-time provisioning results for end-user customers purchasing comparable services, which range from 78 percent to 91 percent during that same period.

Id. Verizon MA continues to provide high quality special access services to carrier customers in Massachusetts, and is not discriminating in favor of end-user customers.² Accordingly, contrary to AT&T's claims, no mandatory regulatory reporting or performance metrics are warranted for the *minimal* number of intrastate special access services provided by Verizon MA.

Moreover, in this proceeding, Verizon MA indicated that in response to market demand, it provides a number of detailed, special access service quality reports to many carriers in Massachusetts on a voluntary basis. Verizon MA Initial Brief, at 4. Because these reports are tailored to the individual customer's need, they are a more effective and useful mechanism than mandatory regulatory reports. This carrier-specific performance reporting, coupled with Verizon MA's own internal measurements for routine monitoring of its special access services and its root-cause analysis undertaken on an as-needed basis, provide substantial means for the carrier and Verizon to review regularly the quality of its special access services. *Id.*

Finally, AT&T recommends that the Department impose reporting requirements on Verizon MA comparable to those used by the New York Public Service Commission ("NYPSC") to monitor performance. AT&T Comments at 15-16. As Verizon MA explained previously in this proceeding, the NYPSC metrics recommended by AT&T are inherently flawed and not a reliable indicator of special access performance. *See* Verizon MA's Initial Brief, at 56-61. AT&T's proposal that the reporting requirements be applied disparately on Verizon MA also directly conflicts with the NYPSC's findings that *all* facilities-based providers be treated the *same* regarding special services performance reporting requirements. Exh. VZ MA 3, at 48; *See Order Denying Petitions for Rehearing and Clarifying Applicability of Special Access Guidelines*, Case Nos. 00-C-2051 & 92-C-0665, at 15 (rel. Dec. 20, 2001). To impose regulatory-mandated reporting requirements only on one service provider (*i.e.*, Verizon MA) would unfairly and unreasonably burden Verizon MA, distort competition and harm consumers.³ *See* Verizon MA Initial Brief, at 5-6.


² AT&T contends that there is "no dispute regarding the data or the statistical calculations" that allegedly show a disparity in the performance Verizon MA provides to retail versus wholesale special access customers. AT&T Comments at 1. This is, of course, not correct. Verizon MA established that AT&T manipulated the data to suit its purposes and that there are significant process differences between retail and wholesale provisioning that make AT&T's purported analyses meaningless. Verizon MA Initial Brief, at 28-49; Verizon MA Reply Brief, at 3-8.

³ The FCC has consistently found the special access services market to be highly competitive and, therefore, eligible for pricing flexibility in certain areas, including Massachusetts. *In the Matter of Verizon Petitions for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, DA 01-663, CCB/CPD Nos.00-24, 00-28 (rel. March 14, 2001) ("*Verizon 2001 Pricing Flexibility Order*"); *In the Matter of Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and

In conclusion, the Department's proposal to close this docket is reasonable and justified. The FCC regulates nearly 100 per cent of the special access services in Massachusetts. The minimal number of intrastate special access services and the competitiveness of the special access services market obviate the need to adopt intrastate measurements.

Throughout this proceeding, Verizon MA has shown that it strives to provide the highest quality service to *all* of its special access customers, both carriers and end users. The record fails to establish any need for intrastate measurements or reporting requirements. Accordingly, the Department should close this investigation, as proposed.

Very truly yours,


Barbara Anne Sousa

cc: Jody Stiefel, Hearing Officer
Michael Isenberg, Esquire, Director – Telecommunications Division
Paula Foley, Esquire, Assistant General Counsel
Service List (electronic distribution only)

Order, DA 02-706, CCB/CPD Nos.01-27, 00-28 (rel. March 22, 2002) ("*Verizon 2002 Pricing Flexibility Order*").

In Massachusetts, interexchange carriers, competitive access providers, competitive local exchange carriers, incumbent local exchange carriers, and end users themselves (many of whom can and do build their own dedicated facilities) vigorously compete with one another in providing special access services – and vie to serve sophisticated customers who wield considerable bargaining power. The demands of a highly sophisticated customer base for high quality service create powerful *market-based* incentives that discipline all suppliers to provide the best possible service. Verizon MA Initial Brief, at 11, 18.